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LEGAL OPINION OF COLEMAN YELLOTT,

CONCERNING AN

ORDER OF THE HOUSE OF DELEGATES,

OF MARCH 5TH, 1858.

BALTIMORE, June 8th, 1858.

DEAR SIR: Yours of the 4th inst., asking my legal opinion in regard to the "order" passed by the House of Delegates on the 5th of March, 1858, was received on Saturday last. A press of professional engagements has prevented me from sending you an earlier reply.

The "order" is in these words; "That the Librarian be and he is hereby authorised and *directed* to pay to his assistant F. C. Hyde, for his services in the Library, out of the Library contingent fund, the sum of fifty dollars per month, and that this order shall take effect from its passage."

I consider this order to be of no binding obligation whatever, for the following reasons:

First. It is in conflict with the 20th section of the 3rd article of our State Constitution; which declares, "No money shall be drawn from the Treasury of the State, except in accordance with an appropriation made by LAW, and every such

law shall distinctly specify the sum appropriated, and the *object to which it shall be applied.*"

A law cannot be passed by the House of Delegates alone ; and there can be no legal appropriation of the State's money unless made by *law*.

If the House of Delegates, by a mere "order," can appropriate \$50 per month to Mr. Hyde, why could it not appropriate \$500 per month to the Governor's private secretary, or to any other individual in the State whom it might select as the object of its bounty ?

But it may be replied that this payment to Mr. Hyde is directed to be made out of the Library contingent fund ; and that said fund was one appropriated by *law*.

The act of 1858 ch. 219, making appropriations for the support of the government for the year ending January 1st. 1859, appropriates "To the contingent fund of the Library, including the expense of *postage*, of *portorage* and *freight*, of *stationery* for the use of said office, of *menial services*, and *assistance*, of *advertising* and *printing*, and all other incidental expenses, thirteen hundred dollars."

The previous general appropriation acts of 1853 ch. 139, 1854 ch. 234, 1854 ch. 309, 1856 ch. 328, and 1856, ch. 348, contain precisely the same clause, and appropriate for the *various purposes* designated a fund of \$1300. All these acts, including the one of 1858 ch. 219, were passed, of course, by the Senate, as well as the House of Delegates. The Senate, as well as the House, decided upon the amount proper to be appropriated, and the particular *purposes* to which it should be applied. It was then left to the judgment of the Librarian, an officer elected of *both* Houses, to apply to *each* of said purposes such proportion of said appropriation as he might deem best for the advantages of the Library, his action in this premises being subject to the supervisory control of the Library Committees of *both* Houses.

This was the "object" to which the Act of 1858, ch. 219, declared the said appropriation of \$1300 "shall be applied."

Does not the "order" of the House of Delegates of March 5th tend to defeat that object, by diverting a large proportion of this contingent fund from the purposes to which the "*law*" designed it to be applied ? Had the House of Delegates the authority to appropriate *one dollar* of that fund to Mr. Hyde ? If so, it had equally the power to appropriate the whole of it to him ! Had the House of Delegates the power to lessen to

the amount of one dollar the fund appropriated to "the expense of postage," "of portorage and freight," "of stationery," "of advertising and printing," &c., by appropriating that sum to the payment of a salary to Mr. Hyde? If so, the House had the power to nullify the *law* entirely, by appropriating the whole fund to a purpose never contemplated, or assented to, by the Senate.

You will see at once the dangerous tendency of such a precedent. If either House can nullify, by "order," a "*law*" passed by *both*, then the 20th section of the 3d article of the Constitution becomes a dead letter.

Secondly. The Order of the House is in conflict with that section of the Constitution providing for the election of a State Librarian, and requiring him "to perform such duties as are now, or may hereafter be prescribed by *law*." (Sec. 7 of Article VII.)

By the true construction of the Acts of 1826, ch. 53, and 1847, ch. 53, prescribing the duties and mode of qualification of the Librarian, it certainly will not be contended that either House of the General Assembly could at its caprice appoint the assistants in the office of the Librarian. The discretion as to the selecting of such assistants was left with that officer himself. He had to give bond "for the faithful discharge of his trust;" and he being responsible on such bond for the proper management of his office, the Acts of Assembly very properly left with him the discretion of selecting such persons as assistants as he thought most reliable and trustworthy. There is no doubt that the General Assembly, by a *law*, could take from the Librarian this discretion, and vest it in other hands; but it is certain that *one House* alone, by a simple "order," cannot do this.

But the House of Delegates have attempted to do this by its order of March 5th; in which it appoints, by name, "F. C. Hyde" an assistant in your office, and directs you to pay him \$50 per month!

For the reasons above stated, and for others that might be given, if I had the time to write more fully, I have no hesitation in saying that I think the "order" in question is unconstitutional and void.

I think, also, that you would not be justified in obeying the said order; because, by so doing, you might hereafter be held accountable on your bond for the amount of money paid to Mr. Hyde, as it would be paid without authority of *law*.

You certainly have a right to pay out of said contingent

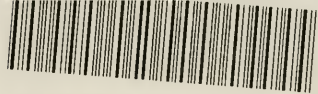
fund, for "assistance," such amount of said fund as you in your best judgment may think *necessary* for the proper management of the office, but nothing more. If you think \$50 per month more than necessary to obtain the needed assistance, you have no right to pay it; and the "order" in question cannot give you such right.

Very truly, yours,

COLEMAN YELLOTT.

L. BOYLE, Esq.,

State Librarian.



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